

Before the  
Federal Communications Commission  
Washington, DC 20554

|   |   |                       |
|---|---|-----------------------|
| In the Matter of                            | ) |                       |
| Request for Review of the                   |   |                       |
| Decision of the                             |   |                       |
| Universal Service Administrator by          | ) |                       |
|   | ) |                       |
| Gloversville Enlarged School District       | ) | File No. SLD-252671   |
| Gloversville, New York                      | ) |                       |
|   | ) |                       |
| Federal-State Joint Board on                | ) | CC Docket No. 96-35   |
| Universal Service                           | ) |                       |
|   | ) |                       |
| Changes to the Board of Directors of the    | ) | CC Docket No. 97-21 ✓ |
| National Exchange Carrier Association, Inc. | ) |                       |

**ORDER**

**Adopted: January 14, 2003**

**Released: January 15, 2003**

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Gloversville Enlarged School District (Gloversville). Gloversville, New York.<sup>1</sup> Gloversville seeks review of a decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator), rejecting Gloversville's appeal on the grounds that it was untimely filed.<sup>2</sup> For the reasons set forth below, we affirm SLD's rejection and deny Gloversville's Request for Review.

2. SLD issued a Funding Commitment Decision Letter on July 23, 2001, denying Gloversville's request for discounted services under the schools and libraries universal service support mechanism.<sup>3</sup> Specifically, SLD denied Gloversville's request for discounts for telecommunications services. Funding Request Number (FRN) 622785.<sup>4</sup> On September 12, 2001, Gloversville filed an appeal of SLD's decision.<sup>5</sup> On September 28, 2001, SLD issued an

<sup>1</sup> Letter from Dr. Paul V. Fiocco, Cloversville Enlarged School District, to Federal Communications Commission, filed February 15, 2002 (Request for Review).

<sup>2</sup> See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission, 47 C.F.R. § 54.719(c).

<sup>3</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Nelson Ronsvalle, Gloversville Enlarged School District, dated July 23, 2001 (Funding Commitment Decision Letter).

<sup>4</sup> *Id.*

<sup>5</sup> Letter from Dr. Paul V. Fiocco, Cloversville Enlarged School District, to Schools and Libraries Division, Universal Service Administrative Company, filed September 12, 2001 (Request for Administrator Review).

submitting its appeal to SLD within the established deadline if the applicant wishes its appeal to be considered on the merits.

6. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. In light of the thousands of applications that SLD reviews and processes each year, it is administratively necessary to place on the applicant the burden of adhering strictly to its filing deadlines." As we have consistently held in the past, it is the applicant who has responsibility ultimately for the timely submission of its appeals." Staffing problems do not relieve applicants of their responsibility to comply with the program's rules and procedures.<sup>16</sup> Therefore, we conclude that Gloversville has failed to demonstrate special circumstances upon which its Waiver Request can be granted.

7. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, 1.3, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91.0.291, 1.3, and 54.722(a), that the Request for Review filed by Gloversville Enlarged School District, Gloversville, New York, on February 15, 2002, and the request to waive the 30-day time limit in which to file an appeal ARE DENIED.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert  
Deputy Chief, Telecommunications Access Policy Division  
Wireline Competition Bureau

<sup>14</sup> See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 25610 (Com. Car. Bur. rel. Nov. 24, 2000), para. 8 ("In light of the thousands of applications that SLD reviews and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures.").

<sup>15</sup> See *FCC Overrules Caldwell Televisions Associates, Ltd.*, Public Notice, 58 RR 2d 1706, 1707 (1985).

<sup>16</sup> See, e.g., *Request for Review by Danbury Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. NEC.471.04-13-00.31900001, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 10910 (Com. Car. Bur. 2001) (denying waiver request in case when employee responsible for filing failed to do so).

Administrator's Decision on Appeal, indicating that it would not consider Gloversville's appeal because it was received more than 30 days after the July 23, 2001 Funding Commitment Decision Letter was issued.<sup>6</sup> Gloversville subsequently filed the instant Request for Review with the Commission.

3. For requests seeking review of decisions issued before August 13, 2001 under section 54.720(b) of the Commission's rules, an appeal must be filed with the Commission or SLD within 30 days of the issuance of the decision that the party seeks to have reviewed.<sup>7</sup> Documents are considered to be filed with the Commission or SLD only upon receipt.<sup>8</sup> The 30-day deadline contained in section 54.720(b) of the Commission's rules applies to all such requests for review filed by a party affected by a decision issued by the Administrator.<sup>9</sup> Because Gloversville failed to file an appeal of the July 23, 2001 Funding Commitment Decision Letter within the requisite 30-day appeal period, we affirm SLD's decision to dismiss Gloversville's appeal to SLD as untimely and deny the instant Request for Review.

4. To the extent that Gloversville is requesting that we waive the 30-day deadline established in section 54.720(b) of the Commission's rules, we deny that request as well.<sup>10</sup> The Commission may waive any provision of its rules, but a request for waiver must be supported by a showing of good cause.<sup>11</sup> Gloversville has not shown good cause for the untimely filing of its initial appeal. Gloversville explains that, as a result of staffing problems, it allowed the 30-day appeal period to pass without filing a timely appeal.<sup>12</sup>

5. We conclude that Gloversville has not demonstrated a sufficient basis for waiving the Commission's rules. Waiver is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.<sup>13</sup> In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of

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<sup>6</sup> Letter from Schools and Libraries Division, Universal Service Administrative Company, to Dr. Paul V. Fiacco, Gloversville Enlarged School District, dated September 28, 2001 (Administrator's Decision on Appeal).

<sup>7</sup> 47 C.F.R. § 54.720(b).

<sup>8</sup> 47 C.F.R. § 1.7.

<sup>9</sup> Due to recent disruptions in the reliability of the mail service, the 30-day appeal period has been extended by an additional 30 days for requests seeking review of decisions issued on or after August 13, 2001. See *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, FCC 01-376 (rel. December 26, 2001), as corrected by *Implementation of Interim Filing Procedures for Filings of Requests for Review, Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata (Com. Car. Bur. rel. December 28, 2001 and January 4, 2002); SLD website, What's New (January 20, 2002). <<http://www.sl.universalservice.org/whatsnew/012002.asp#extended>>. Because the July 23, 2001 Funding Commitment Decision Letter was issued before August 13, 2001, the extended appeal period does not apply to Gloversville.

<sup>10</sup> See 47 C.F.R. § 54.720(b).

<sup>11</sup> See 47 C.F.R. § 1.3.

<sup>12</sup> Request for Review.

<sup>13</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).